



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0711]

RIN 1625-AA00

Safety Zone; Delaware River; Penn's Landing; Philadelphia, PA; Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on a portion of the Delaware River in Philadelphia, PA. This action is necessary to protect the surrounding public and vessels on these navigable waters adjacent to Penn's Landing, Philadelphia, PA, during a fireworks display on October 19, 2018. This regulation prohibits persons and vessels from entering, transiting, or remaining within the safety zone unless authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective from 11 p.m. through 11:59 p.m. on October 19, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0711 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Petty Officer Thomas Welker, U.S. Coast Guard, Sector Delaware Bay,

Waterways Management Division; telephone 215-271-4814, e-mail

Thomas.j.welker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On June 18, 2018, a wedding party notified the Coast Guard that it will be conducting a fireworks display from 11:15 p.m. to 11:45 p.m. on October 19, 2018. The fireworks are to be launched from a barge in the Delaware River adjacent to Penn's Landing in Philadelphia, PA. In response, on September 28, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Delaware River; Penn's Landing; Philadelphia, PA; Fireworks Display; 83 FR 49026. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended October 5, 2018, we received one comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with a fireworks display in this location.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with the fireworks display on October 19, 2018, will be a safety concern for anyone within 500 feet of a fireworks barge in the Delaware River adjacent to Penn's Landing in Philadelphia, PA. The barge will be anchored in approximate position 39°57'05.26' N Latitude 075°08'10.85'' W Longitude. This rule is needed to protect persons, vessels and the public near the fireworks barge during the fireworks display.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published September 28, 2018. The comment we received was unrelated to the proposed regulation. There is one change in the regulatory text of this rule from the proposed rule in the NPRM. The enforcement period was changed from 11:15 p.m. through 11:45 p.m. to 11 p.m. through 11:59 p.m. on the same date. We made this change to account for movement of the barge into and out of the anchor location.

This rule establishes a safety zone from 11 p.m. through 11:59 p.m. on October 19, 2018, for the navigable waters in the vicinity of Penn's Landing, Philadelphia, PA, during a fireworks display from a barge. The event is scheduled to take place at approximately 11:15 p.m. on October 19, 2018. The safety zone will extend 500 feet around the barge, which will be anchored at approximate position 39°57'05.26' N Latitude 075°08'10.85'' W Longitude. Persons or vessels will not be permitted to enter, transit through, or remain within the safety zone without obtaining permission from the COTP or a designated representative.

If authorization to enter, transit through, or remain within the safety zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The Coast Guard will provide public notice of the safety zone by Broadcast Notice to Mariners and by on-scene actual notice.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which will impact a small designated area of the Delaware River for one hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting one hour that would prohibit entry within 500 feet of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part

165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0711 to read as follows:

§ 165.T05-0711 Safety Zone; Delaware River; Penn's Landing; Philadelphia, PA;

Fireworks Display.

(a) Location. The following area is a safety zone: All waters of the Delaware River within a 500-foot radius of the fireworks barge, which will be anchored in approximate position 39°57'05.26' N Latitude 075°08'10.85" W Longitude. All coordinates are based on Datum NAD 1983.

(b) Definitions. As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port, Delaware Bay in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part—

(i) You may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative; and

(ii) All persons and vessels in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(2) To request permission to enter the safety zone, contact the COTP or the COTP's representative on marine band radio VHF-FM channel 16 (156.8 MHz) or 215-271-4807.

(3) No vessel may take on bunkers or conduct lightering operations within the safety zone during the enforcement period.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by federal, state, and local agencies.

(e) Enforcement period. This zone will be enforced from 11 p.m. through 11:59 p.m. on October 19, 2018.

Dated: October 15, 2018

S. E. ANDERSON,
Captain, U.S. Coast Guard,
Captain of the Port Delaware Bay.

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